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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,764	03/09/2001	Guenter Hess	197934US6	4543

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT PAPER NUMBER

3634

DATE MAILED: 02/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/801,764

Applicant(s)

HESS ET AL.

Examiner

Jennifer E. Novosad

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-6 and 8-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6 and 8-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/801,764.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 13.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Request for Continued Examination***

The request filed on January 7, 2003 (Paper No. 13) for a Request for Continued Examination (RCE) under 37 CFR 1.53(d) based on parent Application No. 09/801,764 is acceptable and an RCE has been established. An action on the RCE follows. It is noted that claims 1, 2, 4-6, 8, and 9-14 are pending.

### ***Information Disclosure Statement***

The information disclosure statement filed January 17, 2003 fails to comply with 37 CFR 1.97(d) because it lacks the fee set forth in 37 CFR 1.17(p). *However*, it has been placed in the application file, and Deposit Account No. 15-0030 has been charged the appropriate fee of \$180, as authorized in Paper No. 13.

### ***Title***

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitation "at least substantially polyamide" in claims 8 and 14 renders the claims indefinite since "at least" sets a minimum standard and then "substantially" blurs that minimum and accordingly the metes and bounds of the claims cannot be properly ascertained.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 6, 8, 9, 10, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Llewellyn '993, alone.

Llewellyn '993 discloses an assembly defined by a dishrack in a dishwasher (not shown) whereby the dishrack (10) comprises a frame (see Figure 3) defined by metal rods (16 - see column 2, line 57) that have a plastic coating (18 - see column 2, line 57) which covers the frame (16 - see Figure 3). It is noted that when the dishwasher is in use, the shape of the rods, i.e., circular, would inherently cause the water in the dishwasher to be distributed over the surface of the coating and frame.

The claims differ from Llewellyn '993 in requiring: (a) the surface roughness of the coating to be greater than or equal to 5 $\mu$ m (claims 1 and 9), and (b) the frame to be comprised of *steel* wire (claims 6 and 13).

With respect to (a), although Llewellyn '993 does not disclose the roughness of the coating, it can be seen from Figure 3 that the coating is smooth. *Accordingly*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have fabricated the frame having a coating with a surface roughness, as called for in the claims and as determined through routine experimentation and optimization, thereby decreasing the risk of corrosion.

With respect to (b), although Llewellyn '993 does not disclose the frame being made from *steel*, it would have been an obvious engineering design choice to one of ordinary skill in the art at the time the invention was made to have utilized *steel* wire for the frame, thereby increasing the strength, stability, and rigidity of the frame.

Claims 4, 5, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Llewellyn '993 as applied to claims 1, 2, 6, 8, 9, 10, 13, and 14 above, and further in view of Keeny *et al.* '000.

Llewellyn '993 discloses the assembly as advanced above.

The claims differ from Llewellyn '993 in requiring: (a) the coating to be deposited by a coating process, and (b) the coating to comprise a polyamide.

Keeny *et al.* '000 teach that it is old in the art to utilize a plastic coating process (see column 4, lines 17-30) whereby a polyamide coating is deposited onto such devices as dishwasher baskets.

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With respect to (a) and (b), it would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a polyamide coating placed on the frame by a plastic coating process, as taught by Keeny *et al.* '000, thereby decreasing corrosion and wear resistance.

### ***Response to Arguments***

Applicants' arguments filed December 23, 2002 (Paper No. 8) have been fully considered but they are not persuasive.

Applicants' arguments (in the last sentence of page 2 and the last portion of page 3) are acknowledged. *However*, these arguments are considered to be more limiting than what is actually being claimed even though the use of the terms "thin" and "small" is relative. *Further*, the claims do not recite the function that the coating is intended to perform, i.e., the evaporation of water therefrom due to heat (of the dishwasher), and therefore this argument is more limiting than what is claimed. *Finally*, in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning (see the sentence bridging pages 3 and 4), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).


***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nakamura *et al.*, Babb *et al.*, and Loudermilk *et al.* show various coatings and the processes of formation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)-308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-305-3597 for regular communications and (703)-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1113.

  
Jennifer E. Novosad  
Examiner  
Art Unit 3634

Jennifer E. Novosad/jen  
February 11, 2003